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In re:

Legend

Date 1	=
Decedent	=
Trust	=
Date 2	=
Child 1	=
Child 2	=
Bank	=
State 1	=
State 2	=
Court	=
State Statute 1	=
State Statute 2	=
State Statute 3	=
State Statute 4	=

Dear :

This letter responds to your authorized representative's letter dated April 28, 2010, in which you request rulings concerning the federal income, gift, estate, and generation-skipping transfer (GST) tax consequences of the proposed division and modification of Trust.

The facts submitted and representations made are as follows:

On Date 1, Decedent established Trust, an irrevocable trust, for the benefit of his children and grandchildren. Decedent died on Date 2, survived by Child 1, Child 2, and six grandchildren (the Current Beneficiaries). The trustee of Trust is Bank. Trust is currently administered in State 1.

Pursuant to Article II of Trust, until the death of the survivor of Decedent's children, the trustee shall pay so much of the income and principal as the trustee may in its discretion determine from time to time to one or more of the Current Beneficiaries. The trustee, in the exercise of its power to make distributions, may favor one or more of the Current Beneficiaries to the exclusion of the other Current Beneficiaries. The trustee is directed to consider the welfare of the Current Beneficiaries over the interests of all succeeding beneficiaries in the exercise of its power to make distributions.

Under Section 2.03 of Trust, upon the death of the survivor of Decedent's children, the remaining trust property shall be divided into equal shares to create one share for each grandchild of the Decedent who is then living and one share for each grandchild who is deceased but has living issue. Under Section 2.04, each share shall constitute a separate trust estate. Each share created for a living grandchild who has attained 35 years of age shall be distributed outright to the grandchild.

Under Section 2.05, each share created for a deceased grandchild who has one or more issue then living shall be paid over and distributed to the then living issue of such grandchild, per stirpes. If the grandchild has no surviving issue, the remaining trust property shall be distributed in equal shares among Decedent's grandchildren who are then living and to the issue, per stirpes, of any deceased grandchild who has issue then living. All of Decedent's grandchildren have attained 35 years of age.

Under Section 3.03, any trust created under Trust shall terminate on the date 21 years after the death of the last to die of all the beneficiaries named or described who were living on the date of the creation of Trust. Upon termination, the trust estate will be distributed free and clear of any trust to the income beneficiaries in the same proportions in which they are receiving or entitled to have the benefit of such income.

Under Section 4.07, Child 1 and Child 2 may remove a trustee and appoint as successor trustee any national banking corporation having corporate power and authority to administer trusts and also having a combined capital surplus of at least \$20 million. If Child 1 and Child 2 are both deceased, then the majority of the beneficiaries of Trust who have then reached the age of 21 years may similarly designate a successor trustee.

Section 5.01 provides that Trust shall be construed and administered, and the validity of the trust created shall be determined in accordance with the laws of State 2.

Bank has petitioned the Court of State 1 to approve the division of Trust into two successor trusts (collectively, the Successor Trusts), one for the benefit of the family line of Child 1 and her children (Child 1 Successor Trust), and one for the benefit of the family line of Child 2 and his children (Child 2 Successor Trust). The petition also requests certain modifications to the distribution, termination, and administrative provisions of Trust, which will allow each family group to control more efficiently its respective Successor Trust. Upon Court approval, Bank will divide all of Trust's assets pro rata between the Successor Trusts. Immediately after the division, each Successor Trust will have assets equal in value to one-half of the value of the assets of the entire Trust immediately prior to the division.

Pursuant to the terms of the Amended and Restated Trust Agreement (Amended Trust), the Successor Trusts will contain substantially similar provisions as Trust. Amended Trust provides as follows:

During the lifetimes of Child 1 and Child 2, each child and his or her respective children will continue to be the only Current Beneficiaries of a Successor Trust. As under the terms of Trust, upon the death of the survivor of Child 1 and Child 2, each Successor Trust will be divided into equal shares, one share for each of Child 1's and Child 2's respective children, or Decedent's grandchildren.

The dispositive terms of Trust Section 2.04 will remain the same. Section 2.05 has been modified to provide that upon the death of a grandchild with no living issue, his or her share shall be paid in equal shares to Decedent's grandchildren who are then living and to the issue, per stirpes, of any deceased grandchild who has issue then living. If a grandchild does not have any then living issue, the share will be redistributed among all of Decedent's grandchildren, one share for each living child of Child 1 and Child 2, respectively, and one share for each deceased child of Child 1 and Child 2, respectively, who has then living issue. Accordingly, the per capita division at the grandchildren's level is maintained upon the termination of the Successor Trusts.

The Successor Trusts will give the trustee explicit power to change the situs of administration of the Successor Trusts. Section 4.05 of Amended Trust authorizes the Trustee to remove all or any part of the property or the situs of administration of any trust created from one jurisdiction to another.

Amended Trust will include modifications to reflect that the division has resulted in two identical trusts, one for each family line of Child 1 and Child 2. In general, the modifications allow a respective family line to control the removal and appointment of trustees of their respective Successor Trust. Any trustee so appointed must be an Independent Trustee, as defined in Section 5.01 of Amended Trust.

Section 4.08(a) of Amended Trust authorizes a Corporate Trustee that is an Independent Trustee to act as trustee. Section 5.01(e) adds a definition of Corporate

Trustee, deleting the requirement in Trust that a trustee be a national banking corporation with a combined capital surplus of at least \$20 million.

Sections 5.01(c) and (d) of Amended Trust add the defined terms “Independent Trustee” and “Interested Trustee.” Section 5.01(c) defines an “Independent Trustee” as a trustee who is not an Interested Trustee. Section 5.01(d) defines an “Interested Trustee” as (1) a trustee who is the grantor, (2) a trustee who is a beneficiary of the trust, (3) a trustee who is related or subordinate within the meaning of § 672(c) of the Internal Revenue Code to the grantor or a beneficiary of the trust, or (4) a trustee who the grantor or a beneficiary of the trust can remove and replace by appointing a trustee that is related or subordinate to such person within the meaning of § 672(c). Section 5.01(d) provides that for this purpose “a beneficiary of the trust” means all of the Decedent’s living issue.

State Statute 1, in relevant part, provides that after notice to the qualified beneficiaries, a trustee may divide a trust into two or more separate trusts if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. The terms of each new trust created by a division do not have to be identical if the interest of each beneficiary is substantially the same under the terms of the trust prior to its division and the combined terms of all trusts after the division.

State Statute 2, in relevant part, provides that an irrevocable trust may be modified upon consent of all of the qualified beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

State Statute 3, in relevant part, provides that the court may modify the administrative or dispositive terms of a trust if, because of circumstances not anticipated by the settlor, modification will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor’s probable intention.

State Statute 4 provides that a qualified beneficiary is a beneficiary who, as of the date in question, either is eligible to receive mandatory or discretionary distributions of trust income or principal, or would be so eligible if the trust terminated on that date.

Bank has requested Court of State 1 to apply State 2 law, as required under the terms of Trust, to the division and modification of Trust. State 1 Court has refrained from ruling on the petition until a favorable ruling from the Internal Revenue Service is obtained. If a favorable ruling is obtained, after the pro rata division of Trust into the Successor Trusts, each Successor Trust will contribute substantially all of its property to a new separate holding company (HoldCo). Child 1 Successor Trust will not have an interest in the HoldCo established for Child 2 Successor Trust, and Child 2 Successor Trust will not have an interest in the HoldCo established for Child 1 Successor Trust. It is represented that each HoldCo will be a partnership for tax purposes.

It is represented that Trust has been irrevocable at all times since Date 1, and that no actual or constructive additions have been made to Trust after September 25, 1985.

You are requesting the following rulings:

1. The division of Trust into the Successor Trusts and the modification of the distribution provisions will not cause Trust or the Successor Trusts to lose their exempt status under § 1433(b)(2)(A) of the Tax Reform Act of 1986, and will not cause any distribution from or termination of any interests in Trust or the Successor Trusts to be subject to GST tax under § 2601 of the Internal Revenue Code.
2. The modification of the provisions related to the appointment, removal, and replacement of trustees of Trust and the Successor Trusts will not cause Trust or the Successor Trusts to lose their exempt status under § 1433(b)(2)(A) of the Tax Reform Act of 1986, and will not cause any distribution from or termination of any interests in Trust or the Successor Trusts to be subject to GST tax under § 2601.
3. The modification to allow the trustee to change the situs of administration will not cause Trust or the Successor Trusts to lose their exempt status under § 1433(b)(2)(A) of the Tax Reform Act of 1986, and will not cause any distribution from or termination of any interests in Trust or the Successor Trusts to be subject to GST tax under § 2601.
4. The division and modification will not result in a transfer by any beneficiary of Trust or the Successor Trusts that will be subject to federal gift tax under § 2501.
5. The division and modification will not cause any property of Trust or the Successor Trusts to be includible in the estate of any beneficiary of any such trust under §§ 2035, 2036, 2037, or 2038.
6. The Successor Trusts will be treated as separate trusts for federal income tax purposes.
7. The division and modification will not result in any Trust property having been deemed paid, credited, or distributed for purposes of § 661 or § 1.661(a)-2(f) of the Income Tax Regulations, and so will not result in the realization by Trust, the Successor Trusts, or a beneficiary of any such trust of any income, gain, or loss under §§ 661 or 662.
8. The division and modification will not result in the realization of any income, gain, or loss to Trust, the Successor Trusts, or a beneficiary of any such trust under §§ 61 or 1001, notwithstanding the Successor Trusts' subsequent transfer of property to each HoldCo.

9. The division and modification of Trust will result in each Successor Trust holding its share of Trust's property with the same basis as it had when owned by Trust at the time of the division under § 1015 and with a holding period for such property that includes Trust's holding period under § 1223.

Ruling 1

Section 2601 of the Code (Code) imposes a tax on every generation-skipping transfer, which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Under § 1433 of the Tax Reform Act of 1986 (the Act), GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, except to the extent the transfer is made out of corpus added to the trust by an actual or constructive addition after September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b) will not cause the trust to lose its exempt status. These rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 26.2601-1(b)(4)(i)(A), (B), or (C) of this section) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the GST tax, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Section 26.2601-1(b)(4)(i)(D)(2) provides that, for purposes of this section, a modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. To determine whether a modification of an irrevocable trust will shift a beneficial interest in a trust to a

beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification. If the effect of the modification cannot be immediately determined, it is deemed to shift a beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. A modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), Example 5, considers a situation in which, in 1980, Grantor established an irrevocable trust for the benefit of his two children, A and B, and their issue. Under the terms of the trust, the trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, per stirpes. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust for A and A's issue provides that the trustee has the discretion to distribute trust income and principal to A and A's issue in such amounts as the trustee deems appropriate. On A's death, the trust principal is to be distributed equally to A's issue, per stirpes. If A dies with no living descendants, the principal will be added to the trust for B and B's issue. The trust for B and B's issue is identical (except for the beneficiaries), and terminates at B's death at which time the trust principal is to be distributed equally to B's issue, per stirpes. If B dies with no living descendants, principal will be added to the trust for A and A's issue. The division of the trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the division. In addition, the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

In the present case, the Trust was irrevocable on September 25, 1985. It is represented that no trust additions have been made after September 25, 1985.

The proposed division of Trust into the Child 1 Successor Trust and the Child 2 Successor Trust is substantially similar to the situation described in Example 5 of § 26.2601-1(b)(4)(i)(E). Under the proposed division and modification, the Child 1 Successor Trust and Child 2 Successor Trust will, except as described above, be administered under the original terms of Trust.

Based on the facts submitted and the representations made, and provided the State 1 Court order is effective under State 1 law and includes the modification as described above, we conclude that the proposed division and modification of Trust will not shift a

beneficial interest in Trust to any beneficiary who occupies a lower generation than the persons holding the beneficial interests prior to the division and modification. In addition, the proposed division and modification will not extend the time for vesting of any beneficial interest in the Successor Trusts beyond the period provided in the original terms of Trust. Accordingly, the proposed division and modification will not cause Trust or the Successor Trusts to lose their exempt status and will not cause any distribution from or termination of any interests in Trust or the Successor Trusts to be subject to GST tax under § 2601.

Ruling 2

Section 26.2601-1(b)(4)(i)(E), Example 10, considers the following situation. In 1980, Grantor established an irrevocable trust for the benefit of Grantor's issue, naming a bank and five other individuals as trustees. In 2002, the appropriate local court approves a modification of the trust that decreases the number of trustees which results in lower administrative costs. The modification pertains to the administration of the trust and does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the trust will not be subject to the provisions of chapter 13.

The proposed modification in Section 4.08 of Amended Trust concerning the appointment and removal of trustees, and the definition of "Independent Trustee," "Interested Trustee," and "Corporate Trustee," are to be effected in accordance with state law and pertain to the administration of the trust, comparable to the modification in Example 10 of § 26.2601-1(b)(4)(i)(E). The proposed modification in Section 4.08 does not shift any beneficial interest to a lower generation nor does it extend the time for vesting of any beneficial interest in the Successor Trusts beyond the period provided for in the original terms of Trust. Therefore, based on the facts submitted and the representations made, we conclude that the proposed modification in Section 4.08 will not cause Trust or the Successor Trusts to lose their exempt status and will not cause any distribution from or termination of any interests in Trust or the Successor Trusts to be subject to GST tax under § 2601.

Ruling 3

Section 26.2601-1(b)(4)(i)(E), Example 4, illustrates the effect of changing the situs of a trust. In that case, Grantor, who was domiciled in State X, executed an irrevocable trust in 1980 for the benefit of Grantor's issue, naming a State X bank as trustee. Under the terms of the trust, the trust is to terminate no later than 21 years after the death of the last to die of certain designated individuals living at the time the trust was executed. The provisions of the trust do not specify that any particular state law is to govern the

administration and construction of the trust. In State X, the common law rule against perpetuities applies to trusts. In 2002, a State Y bank is named as sole trustee. The effect of changing trustees is that the situs of the trust changes to State Y, and the laws of State Y govern the administration and construction of the trust. State Y law contains no rule against perpetuities. In this case, however, in view of the terms of the trust instrument, the trust will terminate at the same time before and after the change in situs. Accordingly, the change in situs does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person(s) who held the beneficial interest prior to the transfer. Furthermore, the change in situs does not extend the time for vesting of any beneficial interest in the trust beyond that provided for in the original trust. Therefore, the trust will not be subject to the provisions of chapter 13 of the Internal Revenue Code. If as a result of the change in situs, State Y law governed such that the time for vesting was extended beyond the period prescribed under the terms of the original trust instrument, the trust would not retain exempt status.

In the present case, Trust will terminate at the same time before and after the modification to allow the trustee to change the situs of administration under the terms of the modification. Permitting the trustee to change the situs of administration will not extend the time for vesting of any beneficial interest provided in the original trust agreement, will not increase the amount of any GST transfer, nor will it create any new GST transfer. Therefore, based on the facts submitted and the representations made, we conclude that the modification to allow the trustee to change the situs of administration will not cause Trust or the Successor Trusts to lose their exempt status and will not cause any distribution from or termination of any interests in Trust or the Successor Trusts to be subject to GST tax under § 2601.

Ruling 4

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed a gift that is included in computing the amount of gifts made during the calendar year.

In this case, the beneficiaries of the Successor Trusts will have the same interests after the proposed division that they had as beneficiaries under Trust so there is no direct transfer of assets. Because the beneficial interests, rights, and expectancies of the beneficiaries are substantially similar, both before and after the proposed transaction, no transfer of property will be deemed to occur as a result of the division and modification. Accordingly, based on the facts submitted and the representations made, we conclude that the division and modification of Trust, as described above, will not result in a transfer by any beneficiary of Trust or the Successor Trusts that will be subject to federal gift tax under § 2501.

Ruling 5

Section 2035(a) provides that if (1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and (2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under §§ 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of the decedent's death, the value of the gross estate shall include the value of any property (or interest therein) that would have been so included.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2037 provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property (but in the case of a transfer made before October 8, 1949, only if such reversionary interest arose by the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

Section 2038(a)(1) provides that the value of the decedent's gross estate shall include the value of all property to the extent of any interest therein of which the decedent has

at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period on the date of the decedent's death.

In the present case, the distribution, management, and termination provisions of Child 1 Successor Trust and Child 2 Successor Trust will be substantially similar to the current distribution, management, and distribution provisions of Trust. Accordingly, based on the facts submitted and the representations made, the division and modification of Trust will not cause any property of Trust or the Successor Trusts to be includible in the gross estate of any beneficiary of any such trust under §§ 2035, 2036, 2037, or 2038.

Rulings 6 and 7

Section 643(f) provides that under regulations prescribed by the Secretary, two or more trusts shall be treated as one trust if (1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) the principal purpose of such trusts is the avoidance of the tax imposed by chapter 1 of the Code.

Section 1806(b) of the Tax Reform Act of 1986 provides that in the case of a trust which was irrevocable on March 1, 1984, § 643(f) shall apply only to that portion of the trust which is attributable to a contribution to corpus after March 1, 1984.

Section 661(a) provides that in any taxable year a deduction is allowed in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), for the sum of (1) the amount of income for such taxable year required to be distributed currently; and (2) any other amounts properly paid or credited or required to be distributed for such taxable year, but such deduction shall not exceed the distributable net income (DNI) of the estate or trust.

Section 1.661(a)-2(f) of the Income Tax Regulations provides that gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of a distribution of property in kind if the distribution is in satisfaction of a right to receive a distribution of a specific dollar amount, of specific property other than that distributed, or of income as defined under § 643(b) and the applicable regulations, if income is required to be distributed currently.

Section 662(a) provides that there shall be included in the gross income of a beneficiary to whom an amount specified in § 661(a) is paid, credited, or required to be distributed (by an estate or trust described in § 661), the sum of the following amounts: (1) the

amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not; and (2) all other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year.

Accordingly, based on the facts submitted and the representations made, we conclude that as long as the Successor Trusts created by the division of Trust are each separately managed and administered, they will be treated as separate trusts for federal income tax purposes. Additionally, because the creation of the Successor Trusts is a modification of Trust, for Federal income tax purposes, the Successor Trusts are treated as a continuation of Trust. Therefore, the transfer of assets from Trust to the Successor Trusts will not be treated as a distribution or termination under § 661, and will not result in the realization by Trust, the Successor Trusts, or by any beneficiary of Trust or the Successor Trusts of any income, gain, or loss.

Ruling 8

Section 61(a)(3) provides that gross income includes gains derived from dealings in property.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) provides that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained.

Rev. Rul. 56-437, 1956-2 C.B. 507, holds that the division of a joint tenancy in stock under a partition action provided for by state law to compel the issuance of separate stock certificates is not a sale or exchange. Likewise, the conversion of a joint tenancy in stock into a tenancy in common in order to extinguish the survivorship feature is a nontaxable transaction because the right of the property owners to partition is an inherent ownership right each party possessed under applicable state law.

In *Cottage Savings Ass'n v. Commissioner*, 499 U.S. 554 (1991), a financial institution exchanged its interest in one group of residential mortgage loans for another lender's interest in a different group of residential mortgage loans. The two groups of mortgages

were considered “substantially identical” by the agency that regulated the financial institution. The issue presented was whether a sale or exchange had taken place resulting in a realization of gain or loss under § 1001. The Supreme Court concluded that § 1.1001-1 reasonably interprets § 1001(a) and stated that an exchange of property gives rise to a realization event under § 1001(a) if the properties exchanged are “materially different.” *Id.* at 560-61. In defining what constitutes a “material difference” for purposes of § 1001(a), the Court stated that properties are “different” in the sense that is “material” so long as their respective possessors enjoy legal entitlements that are different in kind or extent. *Id.* at 565. The Court held that mortgage loans made to different obligors and secured by different homes embodied distinct legal entitlements, and that the taxpayer realized losses when it exchanged interests in the loans. *Id.* at 566.

In the present case, in accordance with the laws of State 2, Bank is proposing to divide Trust into the Successor Trusts. The terms and conditions of each Successor Trust are substantially similar to the terms and conditions of Trust. Following the division of Trust, the Child 1 Successor Trust is exchanging its trust property for an interest in its respective HoldCo, a partnership for tax purposes. Similarly, the Child 2 Successor Trust is exchanging its trust property for an interest in its respective HoldCo, a partnership for tax purposes. Because the property interests and legal entitlements of the beneficiaries will remain unchanged by the proposed modification and division, the modification to and division of Trust are an exchange of property that is not material. Thus, based on the facts submitted and the representations made, provided that the transfers of the trust assets by the Successor Trusts to the respective HoldCos are nontaxable exchanges, the proposed modification, division, and subsequent property transfers would not result in the realization of any gain or loss or other taxable event under §§ 61 or 1001 to Trust, the Successor Trusts, or any of the trust beneficiaries, notwithstanding the Successor Trusts’ subsequent transfer of property to the HoldCos.

Ruling 9

Section 1015 generally provides that the basis in property acquired by a transfer in trust is the same as it would be in the hands of the grantor, with adjustments for gain and loss recognized.

Section 1.1015-1(b) provides that property acquired by gift has a single uniform basis although more than one person may acquire an interest in the property. The uniform basis of the property remains fixed subject to proper adjustment for items under §§ 1016 and 1017.

Section 1.1015-2(a)(1) provides that in the case of property acquired after December 31, 1920, by a transfer in trust (other than a transfer in trust by gift, bequest or devise), the basis of property so acquired is the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss

recognized to the grantor under the law applicable to the year in which the transfer was made.

Section 1.1015-2(a)(2) provides that the principles in § 1.1015-1(b) concerning the uniform basis are applicable in determining basis of property where more than one person acquires an interest in property by transfer in trust.

In this case, because neither § 1001 nor § 61 applies to the proposed transaction, the basis of the assets in each of Child 1 Successor Trust and Child 2 Successor Trust will be the same as the basis of the assets in Trust.

Section 1223(2) provides that, in determining the period for which a taxpayer has held property, however acquired, there shall be included the period for which such property was held by another person if, under chapter 1, such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in the taxpayer's hands as it would have in the hands of such other person.

Accordingly, based on the facts submitted and the representations made, we conclude that under § 1223(2) the holding period for each of Child 1 Successor Trust and Child 2 Successor Trust in each asset received from Trust will include the respective holding period of Trust for each such asset.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Moreover, no opinion is expressed or implied concerning the Trustee's power to remove all or any part of trust property under the terms of Amended Trust. The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy for section 6110 purposes
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